

EX PARTE OR LATE FILED
Wiley, Rein & Fielding

ORIGINAL

1776 K Street, N.W.
Washington, D.C. 20006
(202) 719-7000

Fax: (202) 719-7049
www.wrf.com

Writer's Direct Dial
(202) 719-7351

June 30, 1999

RECEIVED

JUN 30 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BY HAND

Magalie Roman Salas, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
12th Street Lobby, TW-A325
Washington, D.C. 20554

Re: Notification of Permitted Written and Oral *Ex Parte*
Presentations in MM Docket Nos. 91-221 and 87-8

Dear Ms. Salas:

Hearst-Argyle Television, Inc. ("HAT"), pursuant to Section 1.1206 of the Commission's rules, hereby submits an original and three copies of the enclosed written *ex parte* presentation to Rick Chessen, senior legal advisor to Commissioner Tristani.

In addition, HAT hereby discloses a June 23, 1999 oral *ex parte* presentation from Bob Marbut, Chairman and co-CEO of HAT, and Dean Blythe, General Counsel of HAT, and their counsel, Richard E. Wiley and Richard J. Bodorff of Wiley, Rein & Fielding, to Rick Chessen. The oral *ex parte* presentation presented the same data and arguments reflected in the attached written *ex parte* submission.

Please contact the undersigned should you have any questions regarding this matter.

Respectfully submitted,



E. Joseph Knoll III

cc: Rick Chessen (by hand)

No. of Copies rec'd 042
List ABCDE

**THE RATIONALE FOR REVISING
THE FCC'S
TELEVISION DUOPOLY RULE**

- The television duopoly rule is designed to promote program and viewpoint diversity in a particular television market
- Currently, the rule prohibits common ownership of television stations with overlapping Grade B signal contours
- In considering changes to the rule, the FCC has recognized that the DMA (Designated Market Area) reflects a particular station's local market and is an appropriate tool for determining actual household viewing patterns and advertising markets
- Despite this recognition, the FCC continues to use a signal contour standard to define the scope of a station's market -- a standard that does not reflect current market realities as recognized by Congress in both the 1992 Cable Act and 1996 Telecommunications Act
- **The Case for a DMA-only Standard**
 - Ratings and advertising are determined on viewership within the DMA
 - Viewers in one DMA identify with their home-market stations
 - Stations thus do not compete for viewers or advertisers with adjacent-market broadcasters
 - Programming is bought and sold on a DMA basis
 - Must-carry rules recognize that the ADI/DMA reflects a station's market
- **No Harm to Any Consumers**
 - Overlap situation often arises in densely populated areas where diversity is already at its greatest
 - Consumer living in a particular DMA and within the Grade A contour of an adjacent market station thus generally has access to a greater number of broadcast stations than the typical consumer

PROPOSED LANGUAGE FOR FCC DUOPOLY RULE

73.3555(b) *Television contour overlap (duopoly)*. No license for a TV broadcast station shall be granted to any party (including all parties under common control) that directly or indirectly owns, operates, or controls another TV broadcast station unless (i) the grant of such license will not result in overlap of the Grade B contour of the station sought to be obtained (computed in accordance with Section 73.684) and the Grade B contour of any other station directly or indirectly owned, operated or controlled by such party; or (ii) in situations in which there is overlap of the signal contours (whether City Grade, Grade A or Grade B) of the station to be obtained and any other station directly or indirectly owned, operated or controlled by such party, the stations with such overlapping signal contours are assigned to separate television markets (as defined in Section 76.55(e)).

THE RATIONALE FOR REVISING THE FCC'S TELEVISION DUOPOLY RULE

- The television duopoly rule is designed to promote program and viewpoint diversity in a particular television market
- Currently, the rule prohibits common ownership of television stations with overlapping Grade B signal contours
- In considering changes to the rule, the FCC has recognized that the DMA (Designated Market Area) reflects a particular station's local market and is an appropriate tool for determining actual household viewing patterns and advertising markets
- Despite this recognition, the FCC continues to use a signal contour standard to define the scope of a station's market -- a standard that does not reflect current market realities as recognized by Congress in both the 1992 Cable Act and 1996 Telecommunications Act
- **The Case for a DMA-only Standard**
 - Ratings and advertising are determined on viewership within the DMA
 - Viewers in one DMA identify with their home-market stations
 - Stations thus do not compete for viewers or advertisers with adjacent-market broadcasters
 - Programming is bought and sold on a DMA basis
 - Must-carry rules recognize that the ADI/DMA reflects a station's market
- **No Harm to Any Consumers**
 - Overlap situation often arises in densely populated areas where diversity is already at its greatest
 - Consumer living in a particular DMA and within the Grade A contour of an adjacent market station thus generally has access to a greater number of broadcast stations than the typical consumer

PROPOSED LANGUAGE FOR FCC DUOPOLY RULE

73.3555(b) *Television contour overlap (duopoly)*. No license for a TV broadcast station shall be granted to any party (including all parties under common control) that directly or indirectly owns, operates, or controls another TV broadcast station unless (i) the grant of such license will not result in overlap of the Grade B contour of the station sought to be obtained (computed in accordance with Section 73.684) and the Grade B contour of any other station directly or indirectly owned, operated or controlled by such party; or (ii) in situations in which there is overlap of the signal contours (whether City Grade, Grade A or Grade B) of the station to be obtained and any other station directly or indirectly owned, operated or controlled by such party, the stations with such overlapping signal contours are assigned to separate television markets (as defined in Section 76.55(e)).

**THE RATIONALE FOR REVISING
THE FCC'S
TELEVISION DUOPOLY RULE**

- The television duopoly rule is designed to promote program and viewpoint diversity in a particular television market
- Currently, the rule prohibits common ownership of television stations with overlapping Grade B signal contours
- In considering changes to the rule, the FCC has recognized that the DMA (Designated Market Area) reflects a particular station's local market and is an appropriate tool for determining actual household viewing patterns and advertising markets
- Despite this recognition, the FCC continues to use a signal contour standard to define the scope of a station's market -- a standard that does not reflect current market realities as recognized by Congress in both the 1992 Cable Act and 1996 Telecommunications Act
- **The Case for a DMA-only Standard**
 - Ratings and advertising are determined on viewership within the DMA
 - Viewers in one DMA identify with their home-market stations
 - Stations thus do not compete for viewers or advertisers with adjacent-market broadcasters
 - Programming is bought and sold on a DMA basis
 - Must-carry rules recognize that the ADI/DMA reflects a station's market
- **No Harm to Any Consumers**
 - Overlap situation often arises in densely populated areas where diversity is already at its greatest
 - Consumer living in a particular DMA and within the Grade A contour of an adjacent market station thus generally has access to a greater number of broadcast stations than the typical consumer

PROPOSED LANGUAGE FOR FCC DUOPOLY RULE

73.3555(b) *Television contour overlap (duopoly)*. No license for a TV broadcast station shall be granted to any party (including all parties under common control) that directly or indirectly owns, operates, or controls another TV broadcast station unless (i) the grant of such license will not result in overlap of the Grade B contour of the station sought to be obtained (computed in accordance with Section 73.684) and the Grade B contour of any other station directly or indirectly owned, operated or controlled by such party; or (ii) in situations in which there is overlap of the signal contours (whether City Grade, Grade A or Grade B) of the station to be obtained and any other station directly or indirectly owned, operated or controlled by such party, the stations with such overlapping signal contours are assigned to separate television markets (as defined in Section 76.55(e)).

**THE RATIONALE FOR REVISING
THE FCC'S
TELEVISION DUOPOLY RULE**

- The television duopoly rule is designed to promote program and viewpoint diversity in a particular television market
 - Currently, the rule prohibits common ownership of television stations with overlapping Grade B signal contours
 - In considering changes to the rule, the FCC has recognized that the DMA (Designated Market Area) reflects a particular station's local market and is an appropriate tool for determining actual household viewing patterns and advertising markets
 - Despite this recognition, the FCC continues to use a signal contour standard to define the scope of a station's market -- a standard that does not reflect current market realities as recognized by Congress in both the 1992 Cable Act and 1996 Telecommunications Act
 - **The Case for a DMA-only Standard**
 - Ratings and advertising are determined on viewership within the DMA
 - Viewers in one DMA identify with their home-market stations
 - Stations thus do not compete for viewers or advertisers with adjacent-market broadcasters
 - Programming is bought and sold on a DMA basis
 - Must-carry rules recognize that the ADI/DMA reflects a station's market
 - **No Harm to Any Consumers**
 - Overlap situation often arises in densely populated areas where diversity is already at its greatest
 - Consumer living in a particular DMA and within the Grade A contour of an adjacent market station thus generally has access to a greater number of broadcast stations than the typical consumer
-

PROPOSED LANGUAGE FOR FCC DUOPOLY RULE

73.3555(b) *Television contour overlap (duopoly)*. No license for a TV broadcast station shall be granted to any party (including all parties under common control) that directly or indirectly owns, operates, or controls another TV broadcast station unless (i) the grant of such license will not result in overlap of the Grade B contour of the station sought to be obtained (computed in accordance with Section 73.684) and the Grade B contour of any other station directly or indirectly owned, operated or controlled by such party; or (ii) in situations in which there is overlap of the signal contours (whether City Grade, Grade A or Grade B) of the station to be obtained and any other station directly or indirectly owned, operated or controlled by such party, the stations with such overlapping signal contours are assigned to separate television markets (as defined in Section 76.55(e)).